

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONNIE ROBINSON,

Respondent-Appellant,

and

TERESA ROSSER,

Respondent.

In the Matter of R.R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONNIE ROBINSON,

Respondent-Appellant,

and

TERESA ROSSER,

Respondent.

UNPUBLISHED
October 2, 2008

No. 282462
Kent Circuit Court
Family Division
LC No. 05-053566-NA

No. 282463
Kent Circuit Court
Family Division
LC No. 05-053573-NA

In the Matter of L.R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RONNIE ROBINSON,

Respondent-Appellant,

and

TERESA ROSSER,

Respondent.

No. 282464
Kent Circuit Court
Family Division
LC No. 05-053574-NA

In the Matter of M.R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERESA ROSSER,

Respondent-Appellant,

and

RONNIE ROBINSON,

Respondent.

No. 282465
Kent Circuit Court
Family Division
LC No. 05-053566-NA

In the Matter of R.R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERESA ROSSER,

Respondent-Appellant,

and

RONNIE ROBINSON,

Respondent.

No. 282466
Kent Circuit Court
Family Division
LC No. 05-053573-NA

In the Matter of L. R., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERESA ROSSER,

Respondent-Appellant,

and

RONNIE ROBINSON,

Respondent.

No. 282467
Kent Circuit Court
Family Division
LC No. 05-053574-NA

Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g). We affirm.

This case involves a history of substance abuse, failure to provide suitable housing, and failure to provide suitable care for the children through sustained, gainful, lawful employment.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A decision is clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire

evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The minor children came into care in September 2005, after respondent-mother tested positive for cocaine, and admitted using cocaine during her pregnancy with the youngest child, M.R.. M.R. tested positive for cocaine when she was born at 27 weeks gestation; respondent-mother received no prenatal care during her pregnancy, and respondent-mother’s environment was not adequate for the medically fragile infant. Respondent-father did not have contact with petitioner until January 2006, when the older children were removed from respondent-mother’s care. Respondent-father worked as a chef in the music and entertainment industry, and traveled extensively for this work. During the time that the minor children were within the trial court’s jurisdiction, it was discovered that respondent-father also had a substance abuse issue.

Respondents were required to participate in psychological evaluations, attend parenting classes, submit to drug screens and hair follicle tests, complete substance abuse programs, and maintain legal income and suitable housing. Respondent-mother failed to attend the evaluation arranged by the caseworker; respondent-father’s evaluation revealed that he was at high risk for future substance abuse if he did not obtain substance abuse treatment. Ten months after the trial court had taken jurisdiction over the minor children, a permanency planning hearing was held, and the trial court found that progress was not being made. A petition to terminate respondents’ parental rights was filed two months later, alleging that respondents continued to test positive for cocaine, did not follow through with referrals, and were evicted from their apartment and could not afford independent housing. A termination trial began approximately four months after the petition to terminate respondents’ parental rights had been filed, and was held in January and February 2007. The trial was adjourned to the end of March, and, at that time, petitioner withdrew the termination petition based on the progress respondents made, particularly in their ability to refrain from using cocaine. Another factor in the withdrawal of the termination petition was that the key witness for petitioner was on bed rest for three months, and could not even testify by telephone. The trial court impressed on respondents that they needed to do everything they could at that point.

At the next review hearing in June 2007, petitioner recommended that the minor children return home. Later that month, respondents submitted to hair follicle tests, and respondent-father tested positive for cocaine. The positive results indicated more than occasional use. Petitioner filed another petition to terminate respondents’ parental rights, alleging respondent-father’s recent positive cocaine test and respondent-mother’s lack of employment or ability to independently support the children.

First, the trial court did not clearly err in terminating respondent-father’s parental rights pursuant to MCL 712A.19b(3)(c) and (g). After testing positive for cocaine, respondent-father refused to admit that he made a mistake and had a relapse, but instead submitted an independent test conducted approximately a month and a half after he tested positive, that screened negative for cocaine. We find no error in the trial court’s conclusion that, since respondent-father did not participate in substance abuse treatment and attending NA or AA meetings, his negative drug screen was not consistent with an attempt to do what was necessary to get himself on track.

Respondent-father bases his argument for reversal on the fact that the only thing that happened after the trial court dismissed the earlier termination petition in March 2007 was that a hair follicle test came back positive for cocaine. Respondent-father appears to take the position that petitioner's hair follicle test was incorrect, based on the test he obtained on his own, although the two tests do not cover the same time period. Respondent-father's argument that nothing changed after the trial court had agreed that the minor children should be returned home, other than the one positive hair follicle test, ignores the facts that respondent-father continued to use cocaine, was not honest about his cocaine use, did not admit to the use of cocaine even after a hair follicle test came back positive, and did not do everything asked of him, nor everything he could, to address his substance abuse problem, even after the positive hair follicle test. The trial court was rightly concerned that the minor children were allowed extended home visits in preparation for their return to respondents' home, and that respondent-father knew that he was still using cocaine at that time, and would have a positive hair follicle test. Moreover, respondent-father had been given almost two years to work on these issues, including a second chance after the trial court dismissed the first termination petition. Given these circumstances, we cannot conclude that the trial court erred by finding that respondent-father's substance abuse issues would not be rectified within a reasonable time considering the ages of the minor children, or that he would be able to provide proper care and custody of the minor children within a reasonable time.

The trial court also did not clearly err in terminating respondent-mother's parental rights. Respondents were working together, so that they could reunify with the minor children, until respondent-father had a positive hair follicle test for cocaine. After that, respondents indicated that they were separating, and that respondent-mother would be pursuing reunification on her own. Petitioner made clear to respondent-mother that she would need to show the trial court that she could care for the minor children on her own, and that she had a legal source of income and suitable housing, in order for the court to consider returning the minor children to her care. A short time later, respondent-mother indicated to petitioner that she was continuing her relationship with respondent-father and that respondents would be planning together for reunification with the minor children.

Respondent-mother had a history of substance abuse, used cocaine when she was pregnant with the youngest child, and tested positive for cocaine when Mariah was born. Respondent-mother continued to test positive approximately a year after the court took jurisdiction over the minor children, although she had negative tests for the approximately one year-period before the termination trial. She complied with some of her parent agency agreement, although she did not complete the required psychological evaluation. Moreover, she also minimized respondent-father's hair follicle test, and did not do everything in her power to address the continued substance abuse. She continued a relationship with respondent-father after he tested positive for cocaine in June 2007, did not immediately go back into therapy, did not comply with petitioner's requirement that she attend NA meetings, did not obtain employment, and could not show the court that she was able to care for the minor children on her own.

Respondent-mother argues that she was forced to remain with respondent-father because of financial considerations, and that the trial court incorrectly imputed respondent-father's positive hair follicle test to her. The trial court did not clearly err by concluding that respondent-mother's decision to stay with respondent-father was a detriment to her ability to remain drug

free. Respondent-mother had completed therapy and several drug treatment programs, and she knew that she needed to make sound choices about the people in her life, as well as having the appropriate support system to help her abstain from drug use. The trial court did not err by finding that the children would be at risk if they were returned to respondent-mother's home when she remained with a partner who could not support her efforts to remain drug free. We reject respondent-mother's argument that petitioner did not assist her in obtaining the resources she needed to care for the minor children on her own since respondent-mother informed petitioner that she was going to plan with respondent-father, and only briefly stated that she would plan independently. Respondent-mother had been given almost two years to work on these issues, including a second chance (after the trial court dismissed the first termination petition), and she was unable to show the trial court that the issues would be rectified within a reasonable time, considering the ages of the minor children, or that she would be able to provide proper care and custody of the minor children, within a reasonable time.

Affirmed.

/s/ Alton T. Davis

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello